

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT LEARY : CIVIL ACTION  
 :  
 vs. :  
 :  
 :  
 ROBERT TOMASZEWSKI, ET AL. : NO. 05-5769

MEMORANDUM - ORDER

YOHN, J. February , 2007

\_\_\_\_\_ Defendant Robert Tomaszewski has filed a motion for summary judgment. Plaintiff has not filed a response.

Tomaszewski was Warden of the Curran-Fromhold Correctional Facility during plaintiff's incarceration in 2004. He has been sued in both his individual and official capacities.

As to the suit in his individual capacity, the mere fact that he was in a supervisory position is insufficient to establish liability under § 1983 as there is no respondeat superior liability with reference to such claims. Thus, plaintiff must come forward with some proof of "personal direction" or "actual knowledge and acquiescence" of the supervisory official in the alleged unconstitutional conduct. Plaintiff has produced no evidence that Tomaszewski had any personal involvement in or knowledge of any of the incidents or conduct outlined in his complaint. Tomaszewski has also filed an affidavit stating that he had no personal knowledge of, or personal involvement in, any of the alleged conduct outlined in the complaint. As a result, defendant's motion for summary judgment will be granted as to his individual liability.

Plaintiff also sues Tomaszewski in his official capacity. Such a suit is the equivalent of a suit brought against the public entity, in this case, the City of Philadelphia.

Again, there is no respondeat superior liability under § 1983. To prevail against the City of Philadelphia the plaintiff must prove that his rights were violated as the result of a municipal policy or custom. The plaintiff must identify the challenged policy or custom attributed to the City and show a causal link between the execution of the policy or custom and the injury suffered. Plaintiff has presented no evidence of a policy or custom by the City of Philadelphia which would violate his constitutional rights. Likewise, he has produced no evidence that any alleged policy or custom of the City was a substantial factor in causing the alleged constitutional violations. As a result, defendant Tomaszewski's motion for summary judgment as to plaintiff's claim against him in his official capacity will also be granted.

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O R D E R

**AND NOW**, this 21<sup>st</sup> day of February, 2007, upon consideration of the motion for summary judgment of defendant Robert Tomaszewski (Document No. 40) and plaintiff's lack of response thereto, **IT IS HEREBY ORDERED** that the motion is **GRANTED** and judgment is entered in favor of defendant Robert Tomaszewski and against plaintiff Robert Leary.

**IT IS FURTHER ORDERED** that trial of plaintiff's remaining claim against Miss Cruise is **SCHEDULED** for May 7, 2007 at 10:00 a.m.

s/William H. Yohn Jr.  
William H. Yohn Jr., Judge